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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

BEFORE THE HONORABLE GARY W. THOMAS

--000--

CHURCH OF SCIENTOLOGY)
INTERNATIONAL,)
)
PLAINTIFF,)
)
VS.)
)
GERALD ARMSTRONG, ET AL.,)
)
DEFENDANTS.)
_____)

NO. 157680

REPORTER'S TRANSCRIPT OF THE PROCEEDINGS

FRIDAY, OCTOBER 6, 1995

APPEARANCES:

FOR THE PLAINTIFF:

ANDREW H. WILSON
WILSON, RYAN & CAMPILONGO
115 SANSOME STREET
FOURTH FLOOR
SAN FRANCISCO, CA 94104

LAURIE J. BARTILSON
MOXON & BARTILSON
6255 SUNSET BOULEVARD
SUITE 2000
HOLLYWOOD, CA 90028

FOR THE DEFENDANTS:

FORD GREENE
711 SIR FRANCIS DRAKE
BOULEVARD
SAN ANSELMO, CA 94960

REPORTED BY:
ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948

--000--

1 FRIDAY, OCTOBER 6, 1995

MORNING SESSION

2

3 P R O C E E D I N G S

4 --000--

5 THE COURT: WE DO HAVE THE CHURCH OF SCIENTOLOGY
6 VERSUS GERALD ARMSTRONG.

7 MR. WILSON: GOOD MORNING, YOUR HONOR. ANDREW
8 WILSON AND LAURIE BARTILSON ON BEHALF OF PLAINTIFF AND
9 MOVING PARTY, THE CHURCH OF SCIENTOLOGY.

10 MR. GREENE: AND FORD GREENE ON BEHALF OF
11 DEFENDANT, GERALD ARMSTRONG. IT WAS AT MY REQUEST THAT THIS
12 HEARING IS BEING HELD.

13 THE COURT: YES. MR. GREENE, WHAT DO YOU HAVE TO
14 SAY?

15 MR. GREENE: FIRST, YOUR HONOR, WITH RESPECT TO
16 YOUR TENTATIVE RULING, I WANT TO DIRECT MY ARGUMENT TO YOUR
17 HOLDING THAT THE FACTS SUBMITTED BY ARMSTRONG DO NOT
18 ESTABLISH A MUTUAL CONFIDENTIALITY REQUIREMENT.

19 THE INTERPRETATION OF THE COURT OF THE SETTLEMENT
20 AGREEMENT AS REFLECTED BY THE TENTATIVE RULING WOULD HAVE
21 THE RESULT THAT SCIENTOLOGY COULD PUBLICLY ACCUSE
22 MR. ARMSTRONG OF BEING A LIAR, A PERJUROR AND AN AGENT
23 PROVOCATEUR OF THE FEDERAL GOVERNMENT, AND THAT IF ARMSTRONG
24 TOOK ANY ACTION IN RESPONSE THAT THE RESULT WOULD BE THAT HE
25 WOULD VIOLATE THE PROPOSED PERMANENT INJUNCTION AND WOULD BE
26 SUBJECT TO BEING JAILED FOR CONTEMPT OF A COURT ORDER.

27 WHAT THE COURT HAS MISSED IN THE TENTATIVE RULING
28 IS THE EVIDENCE THAT ARMSTRONG HAS SUBMITTED FROM

1 SCIENTOLOGY'S OWN COUNSEL, LAWRENCE HELLER, WHO THE COURT
2 WILL RECALL WAS THE LAWYER WHO WAS PRESENT AT THE SIGNING OF
3 THE SETTLEMENT AGREEMENT, AND HELLER'S OWN SWORN TESTIMONY
4 AS SET FORTH IN SEPARATE FACTS 101 AND 102, WHICH THE COURT
5 DID NOT ADDRESS AND DID NOT INCLUDE IN THE TENTATIVE RULING,
6 STATES THAT THE CONFIDENTIALITY PROVISIONS WERE MUTUAL, THAT
7 THEY WERE INSISTED UPON BY ALL PARTIES, AND THAT THEY
8 PERTAINED NOT ONLY TO ANY INFORMATION THAT THE FORMER
9 SCIENTOLOGY OFFICIAL POSSESSED WITH RESPECT TO THAT
10 ORGANIZATION, BUT IT ALSO PERTAINED -- THE CONFIDENTIALITY
11 PROVISION PERTAINED WITH RESPECT TO INFORMATION HELD BY
12 SCIENTOLOGY AS TO ITS FORMER PARISHIONER OR FORMER OFFICIAL.

13 THAT SINGLE PIECE OF EVIDENCE IS SUFFICIENT UNDER
14 THE CIRCUMSTANCES AND WITH RESPECT TO A 437(C) MOTION TO
15 RAISE A TRIABLE ISSUE OF FACT.

16 WHAT THE COURT HAS DONE BASED ON THE TENTATIVE
17 RULING HAS BEEN SOLELY TO BASE ITS ANALYSIS ON THE FOUR
18 CORNERS OF THE DOCUMENT AND HAS NOT LOOKED AT ALL TO WHAT
19 THE CIRCUMSTANCES WERE WHICH SURROUNDED THE PARTIES ENTERING
20 INTO THE AGREEMENT, AND ALSO HAS NOT LOOKED AT THE CONDUCT
21 OF THE PARTIES SUBSEQUENT TO THE AGREEMENT, AND THE
22 AUTHORITY WITH RESPECT TO SUBSEQUENT CONDUCT IS -- THAT IS
23 AUTOMOBILE SALES VERSUS EAST BAY MOTOR CAR DEALERS, 10
24 CAL.APP.3RD 419.

25 BASICALLY WHAT THAT TALKS ABOUT IS EVEN IF THE
26 LANGUAGE IN A PARTICULAR AGREEMENT APPEARS ON ITS FACE
27 CLEAR, WHICH WE --

28 THE COURT: NOW, MR. GREENE, THE STATEMENT BY

1 ARMSTRONG IN HIS DECLARATION, FACT ONE-H, SAYING MY CAREFUL
2 WEIGHING OF MY OPTIONS, THIS IS HIS WORDS, IN FACT REFLECTS
3 THE DURESS I WAS UNDER TO SIGN AND IS NOT REFLECTIVE OF AN
4 ABSENCE OF DURESS --

5 MR. GREENE: THAT'S A DIFFERENT ARGUMENT.

6 THE COURT: -- DOUBLE SPEAK --

7 MR. GREENE: THAT'S A DIFFERENT ARGUMENT. I'M
8 NOT ADDRESSING MYSELF TO THE DURESS ARGUMENT. I'M NOT
9 ADDRESSING MYSELF TO THE ARGUMENT OF ALL OF THE KINDS OF
10 CONDUCT THAT ARMSTRONG --

11 THE COURT: CAREFUL WEIGHING OF OPTIONS --

12 MR. GREENE: I UNDERSTAND.

13 THE COURT: -- IS TO BE INCONSISTENT WITH THE
14 ABSENCE OF THE FREE EXERCISE OF WILL.

15 MR. GREENE: THAT'S NOT MY ARGUMENT. I'M TALKING
16 ABOUT THE MUTUALITY, BECAUSE IF THE AGREEMENT ACCORDING TO
17 ATTORNEY HELLER, WHO STATED UNDER PENALTY OF PERJURY
18 REPRESENTING CSI WHO'S THE PARTY HERE IN A MOTION TO QUASH
19 ARMSTRONG'S DEPOSITION TESTIMONY IN ANOTHER CASE BEFORE THIS
20 LAWSUIT WAS EVER FILED, BEFORE THERE WAS ANY DISPUTE ABOUT
21 THE SETTLEMENT AGREEMENT, HELLER SAYS THIS WAS MUTUAL, BOTH
22 PARTIES SOUGHT IT.

23 BOTH PARTIES WERE TO MAINTAIN SILENCE AND NOT SAY
24 A DOGGONE THING ABOUT ONE ANOTHER, AND THAT SPECIFIC
25 EVIDENCE IS FOUND AT ARMSTRONG'S EVIDENCE ONE-AD. THAT'S A
26 DECLARATION FROM THE VERY LAWYER WHO WAS PRESENT AT THE
27 SIGNING OF THE SETTLEMENT AGREEMENT AND WHO ALSO SAYS I WAS
28 PERSONALLY INVOLVED IN THE NEGOTIATIONS WHICH RESULTED IN

1 THIS SETTLEMENT AGREEMENT.

2 SO I'M NOT TALKING ABOUT DURESS. I'M NOT TALKING
3 ABOUT FRAUD YET. I'M TALKING ABOUT MUTUALITY, AND THAT I'M
4 TALKING ABOUT THE GOOSE AND GANDER RULE AND THAT WHAT WAS
5 GOOD FOR --

6 THE COURT: THERE'S NO SUCH RULE NOW.

7 MR. GREENE: WELL, THAT'S WHAT YOUR TENTATIVE
8 RULING --

9 THE COURT: THAT'S --

10 MR. GREENE: -- CLEARLY INDICATES.

11 THE COURT: -- OTHER PERSONS NOW.

12 MR. GREENE: JUDGE, YOU DO A VERY GOOD JOB OF
13 ALMOST DERAILING ME.

14 THE POINT IS THAT THE COURT DIDN'T LOOK AND
15 DIDN'T INCORPORATE THOSE FACTS AND THOSE FACTS ARE NOT
16 DISPUTED. THAT'S NUMBER ONE. ACCORDING TO THE CASE LAW
17 THAT THE SUBSEQUENT CONDUCT OF THE PARTIES TO AN AGREEMENT
18 IS VERY RELIABLE EVIDENCE OF WHAT THEIR INTENTIONS WERE IN
19 ENTERING INTO THE AGREEMENT, AND THAT'S WHAT THE COURT HAS
20 TO DO FIRST IS TO ASCERTAIN WHAT WAS THE INTENTIONS OF THE
21 PARTIES, AND IN ORDER TO DO THAT THE COURT'S GOT TO PUT
22 ITSELF IN THE SHOES OF THE PARTIES AT THE TIME THE AGREEMENT
23 WAS ENTERED INTO, AND THAT LEADS ME TO THE SECOND SUPPORTING
24 ARGUMENT WITH RESPECT TO THE RECIPROCAL NATURE OF THE KEEP
25 QUIET PROVISIONS, AND THAT'S BASED ON CIVIL CODE SECTION
26 1647.

27 THE COURT: WELL, IS THERE SOMETHING IN THE
28 CONTRACT THAT'S SO DIFFICULT TO EXPLAIN THAT HAS TO BE

1 EXPLAINED BY ACTIONS?

2 MR. GREENE: YES.

3 THE COURT: WHAT IS IT?

4 MR. GREENE: THERE IS.

5 THE COURT: BASICALLY KEEP YOUR MOUTH SHUT. WE
6 GAVE YOU \$800,000 DOLLARS.

7 MR. GREENE: AH, BUT SEE, THAT'S -- I KNOW THAT,
8 JUDGE, AND THAT'S BEEN THE STICKING POINT IN MY PERCEPTION
9 OF YOUR VIEW OF ARMSTRONG AND THIS CASE ALL THE WAY ALONG.
10 HE GOT \$800,000 BUCKS SO HE DOGGONE WILL -- BETTER KEEP HIS
11 MOUTH SHUT.

12 THE COURT: AND IT'S IN THE AGREEMENT. IF YOU
13 OPEN YOUR MOUTH, YOU HAVE TO PAY BACK \$50,000 EVERY TIME.

14 MR. GREENE: BUT -- WELL, THAT'S -- YET THE
15 LIQUIDATED DAMAGES --

16 THE COURT: HE OPENED HIS MOUTH AND NOW THEY WANT
17 \$50,000 PER EACH TIME.

18 MR. GREENE: JUDGE --

19 THE COURT: THAT'S THE SUBJECT OF ACTS OF THE
20 CHURCH.

21 MR. GREENE: JUDGE, THE ADDITIONAL -- WHAT THE
22 COURT DIDN'T DO AND THE AUTHORITY IS PG&E VERSUS G.W. THOMAS
23 GRANGE --

24 THE COURT: YES, NO RELATION TO ME, ALTHOUGH I
25 LIKED SEEING THAT IN THE STREETS OF SAN FRANCISCO YEARS AGO.

26 MR. GREENE: -- 69 CAL.2D, 33, DISCUSSES --

27 THE COURT: I ASKED MY FATHER, AND HE ADVISED ME
28 I WASN'T NAMED AFTER HIM EITHER.

1 MR. GREENE: -- DISCUSSES THAT THE COURT NEEDS TO
2 LOOK AT THE OBJECT NATURE AND SUBJECT MATTER OF THE CONTRACT
3 SO THAT IT CAN PLACE ITSELF IN THE POSITION OF THE PARTIES.
4 AND WHAT IS BEFORE THE COURT IS THAT AS OF DECEMBER 6TH,
5 1986, ARMSTRONG HAD BEEN JUDICIALLY CREDITED BY JUDGE
6 BRECKENRIDGE (SIC) AS BEING TRUTHFUL AND AS BEING ACCURATE.

7 SCIENTOLOGY IN THE SAME DECISION HAD BEEN
8 JUDICIALLY FOUND TO BE FULLY CAPABLE OF INTIMIDATION OR
9 OTHER PHYSICAL OR PSYCHOLOGICAL ABUSE IF IT SOUGHT -- IF IT
10 LED TO THE ENDS THAT THEY SOUGHT. JUDGE BRECKENRIDGE (SIC)
11 ALSO --

12 THE COURT: NOW, THE OTHER SIDE SAYS IN ESSENCE
13 IF ONE ACCEPTS YOUR ARGUMENT, ONE IS FACED WITH THE
14 UNESCAPABLE CONCLUSION, YOUR CLIENT, HE MADE A PROMISE
15 WITHOUT THE INTENTION OF PERFORMING IT.

16 MR. GREENE: SEE, THE PROBLEM IS, JUDGE, THAT
17 ARMSTRONG --

18 THE COURT: THEY DID PERFORM, THE OTHER SIDE,
19 BECAUSE THEY GAVE THE \$800,000.

20 MR. GREENE: THE PROBLEM WITH THAT ARGUMENT AND
21 THAT VIEW IS THAT IT OCCLUDES ANY REFERENCE TO THE FACT THAT
22 ARMSTRONG AT THE TIME OF THIS SETTLEMENT AGREEMENT HAD A
23 PENDING CROSS-COMPLAINT AND THAT CROSS-COMPLAINT INCLUDED
24 BEING RUN OVER BY A CAR DRIVEN BY AGENTS OF SCIENTOLOGY,
25 INVOLVED IN FREEWAY ACCIDENTS IN VEHICLES DRIVEN BY
26 SCIENTOLOGY, SURVEILED, SPIED ON, AND HARASSED. IN LESS
27 THAN FIVE MONTHS PRIOR TO THE POINT THAT THIS CASE -- THAT
28 THE SETTLEMENT AGREEMENT WAS ENTERED INTO AND ARMSTRONG

1 AGREED TO DISMISS HIS CROSS-COMPLAINT THAT WAS BASED ON
2 CONDUCT OF THAT SORT, AN L.A. COUNTY JURY HAD AWARDED \$30
3 MILLION DOLLARS ON BEHALF OF LARRY WASHORN (SIC) ON BEHALF
4 OF SCIENTOLOGY.

5 IT'S NOT THAT ARMSTRONG WAS PAID \$800,000 DOLLARS
6 IN ORDER TO KEEP HIS MOUTH SHUT. HE WAS PAID \$800,000
7 DOLLARS TO DISMISS HIS CROSS-COMPLAINT, AND IT WAS
8 RECIPROCALLY AGREED BETWEEN SCIENTOLOGY AND ARMSTRONG THAT
9 BOTH OF THEM WOULD KEEP THEIR MOUTHS SHUT, AND WHEN
10 SCIENTOLOGY DIDN'T, WHEN SCIENTOLOGY WAS OUT IN PUBLIC AND
11 IN COURT STAYING ARMSTRONG'S A LIAR, ARMSTRONG'S A PERJUROR,
12 ARMSTRONG'S A PROVOCATEUR, WAS INVOLVED IN SOME GOVERNMENTAL
13 CONSPIRACY TO TRY TO TAKE OVER THE CHURCH OF SCIENTOLOGY,
14 THEN AT THAT POINT, THE REQUIREMENT FOR HIM TO CONTINUE TO
15 ADHERE TO THE SILENCE PROVISIONS AS THEY PERTAINED TO HIM NO
16 LONGER EXISTED.

17 SO IT'S NOT NEARLY SO SIMPLE THAT GERALD
18 ARMSTRONG WAS JUST SORT OF OUT IN LIFE AND ACCEPTED ALMOST A
19 MILLION DOLLARS TO KEEP HIS MOUTH SHUT. HE ACCEPTED -- AND
20 YOU LOOK ALSO, JUDGE, AT SCIENTOLOGY'S OWN EVIDENCE WHICH IS
21 THEIR OWN EVIDENCE AT EXHIBIT ONE-C AT PAGES FOUR AND FIVE,
22 AND THAT WAS THE VALUATION OF ALL OF MICHAEL FLYNN'S
23 CLIENTS, SOME TWENTY CLIENTS THAT WERE ENGAGED IN THIS
24 GLOBAL SETTLEMENT ALL OF WHICH --

25 THE COURT: NOW, MR. GREENE, OF COURSE, THE
26 PAPERS SUBMITTED HAS THE LOS ANGELES SUPERIOR COURT ORDER.
27 YOU'VE REFERRED TO LOS ANGELES AND WHAT'S TAKEN PLACE THERE.
28 THE ORDER SAYS, THE QUOTE IS, THE AGREEMENT TERMS ARE CLEAR

1 AND UNAMBIGUOUS. THE CROSS-COMPLAINANT UNDERSTOOD, THAT'S
 2 YOUR CLIENT, UNDERSTOOD THE TERMS AND SIGNED IT. THE
 3 DUTIES, OBJECTIONS, OBLIGATIONS OF AGREEMENT ARE CLEARLY
 4 STATED. MUTUALITY AND RECIPROCAL DUTIES CANNOT BE READ INTO
 5 THE UNAMBIGUOUS TERMS OF THE AGREEMENT. THERE ARE NO
 6 PROVISIONS IN THE AGREEMENT PROHIBITING THE CROSS-DEFENDANT
 7 FROM REFERRING TO CROSS-COMPLAINANT WITH THE PRESS OR IN
 8 LEGAL PLEADINGS OR DECLARATIONS.

9 MR. GREENE: WELL, JUDGE, IT'S NOT REALLY FAIR
 10 FOR TO YOU RELY ON THAT, BECAUSE A GRANT OF A MOTION FOR
 11 PRELIMINARY INJUNCTION --

12 THE COURT: WELL, NOW, I AGREE THAT THE RULING IS
 13 NOT THE LAW OF THE CASE.

14 MR. GREENE: OKAY. YOU ALSO HAVE ANOTHER JUDGE
 15 FROM THE SAME COURT SAYING THAT THIS IS THE MOST AMBIGUOUS
 16 ONE-SIDED UNFAIR AGREEMENT HE'D EVER SEEN, AND IF IT HAD
 17 BEEN SUBMITTED TO HIM HE WOULDN'T HAVE -- OR TO JUDGE
 18 BRECKENRIDGE (SIC) THE ORIGINAL JUDGE WHO PRESIDED OVER THE
 19 TRIAL WHERE SCIENTOLOGY ORIGINALLY SUED ARMSTRONG, HE
 20 WOULDN'T HAVE ENFORCED ANY OF IT.

21 SO WE CERTAINLY HAVE ACCURACIES IN THE EYE OF THE
 22 BEHOLDER, AND JUST BECAUSE ONE JUDGE SAYS THAT THIS IS
 23 UNAMBIGUOUS DOESN'T MEAN ANOTHER JUDGE IS GOING TO DO IT,
 24 AND YOU HAVE TO INDEPENDENTLY DECIDE, AND BASED ON YOUR
 25 TENTATIVE RULING, YOU DIDN'T LOOK AT LAWRENCE HELLER'S
 26 DECLARATION WHERE HE SAYS UNDER OATH REPRESENTING CSI THAT
 27 IT WAS A MUTUAL PROVISION, AND THAT'S WHAT IS THE SINGLE
 28 MOST GLARING OMISSION, WITH ALL DUE RESPECT, IN YOUR

1 TENTATIVE RULING, IS THAT YOU DON'T TAKE THAT INTO YOUR
2 EVALUATION AT ALL. YOU LOOK AT THE FOUR CORNERS, AND YOU
3 SAY THAT PROVISION SEVEN-I, THE CLEAN SLATE PROVISION, ONLY
4 APPLIES IF THERE'S LITIGATION AMONG THE PARTIES SO THERE'S
5 NO VIOLATION WITH RESPECT TO THAT ON SCIENTOLOGY'S SIDE, AND
6 THEN WITH RESPECT TO 18-D, DON'T TELL ANYBODY ABOUT THE
7 EXISTENCE OF THIS SETTLEMENT AGREEMENT, THAT WASN'T VIOLATED
8 EITHER.

9 I MEAN ARMSTRONG'S PUT IN THE POSITION WHERE HE
10 FINDS OUT THAT SCIENTOLOGY IS ACTIVELY CONDUCTING AN APPEAL
11 IN HIS OWN CASE THAT HE BY THIS AGREEMENT IS PROHIBITED FROM
12 OPPOSING, AND HE GOES TO THE COURT OF APPEAL AND HE SAYS
13 COURT OF APPEAL, THIS IS THE AGREEMENT, I'M GIVING IT TO YOU
14 UNDER SEAL, IT SAYS THAT I CAN'T PARTICIPATE IN MY OWN
15 APPEAL, BUT I WANT TO ANYWAY. THE COURT OF APPEAL SAYS YES,
16 YOU CAN. THAT IS NOT CLEAR.

17 THAT'S IN THE RECORD HERE. THAT WAS NOT
18 CONSIDERED BY THE COURT, AND FOR THE PURPOSES OF SUMMARY
19 JUDGMENT IT'S TOO SOON AND IT'S TOO FAST, BECAUSE IT'S NOT
20 SO CLEAR CUT. AND JUDGE, GERHARDT (SIC) WHEN SCIENTOLOGY
21 FIRST SOUGHT TO ENFORCE THIS AGREEMENT UNDER THE RUBRIC OF
22 THE ORIGINAL SCIENTOLOGY LITIGATION, IT'S THAT ON THE RECORD
23 AND IT'S IN EVIDENCE BEFORE THE COURT, HE SAID THIS
24 AGREEMENT --

25 THE COURT: YES, YOU'VE ARGUED THAT FOR A LONG
26 TIME NOW. SOMETHING YOU WANT TO SAY IN RESPONSE?

27 MR. WILSON: VERY BRIEFLY. WHAT'S REALLY
28 HAPPENED HERE IS THAT THERE HAVE BEEN SEVERAL COURTS THAT

1 HAVE APPLIED THE GANDER RULE THAT TOOK A GANDER AT THE
2 AGREEMENT, REALIZED IT WASN'T AMBIGUOUS, AND HELD THAT IT
3 WAS ENFORCEABLE, HELD THAT THERE WAS NO SUCH MUTUALITY, THAT
4 THE CONFIDENTIALITY PROVISIONS WENT ONE WAY, JUDGE HOHIGIN
5 (SIC) AWARDED US A PRELIMINARY INJUNCTION. THAT WAS
6 AFFIRMED BY THE COURT OF APPEAL. JUDGE HORSICKS (SIC) FROM
7 LOS ANGELES GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF
8 ACTION. YOU GRANTED SUMMARY JUDGMENT ON SEVERAL CAUSES OF
9 ACTION PREVIOUSLY IN, I BELIEVE, DECEMBER, AND NOW YOU
10 GRANTED SUMMARY JUDGMENT AGAIN WITH THE AGREEMENT IN
11 PROPERLY DECIDING THAT YOU CAN LOOK AT THE FOUR CORNERS AND
12 YOU CAN SEE THAT THERE'S NO SUCH MUTUALITY PROVISION.

13 AS FAR AS THE HELLER DECLARATION IS CONCERNED,
14 MR. GREENE MISREPRESENTS WHAT'S IN THERE. IT DOESN'T SAY
15 THAT BOTH PARTIES WANTED THE MUTUALITY OF THE
16 CONFIDENTIALITY.

17 I THINK THAT THIS MATTER HAS BEEN ARGUED ENOUGH,
18 AND I REALLY DON'T THINK IT NEEDS ANY FURTHER ARGUMENT.

19 MR. GREENE: I'VE GOT HELLER'S PAPERS RIGHT HERE
20 IF THE COURT WANTS TO LOOK AT EXACTLY WHAT THEY SAY, AND I'M
21 SORRY, MR. WILSON, YOU'RE WRONG. WITH RESPECT TO THE COURT
22 OF APPEALS REVIEW OF THE PRELIMINARY INJUNCTION, THE COURT
23 OF APPEAL SPECIFICALLY AND EXPRESSLY WITHHELD ANY
24 DETERMINATION OF THE ENFORCEABILITY OF THE AGREEMENT. IT
25 ONLY LOOKED AT THE INJUNCTION. IT DID NOT EVALUATE AND MAKE
26 A JUDICIAL DETERMINATION WITH RESPECT TO THAT.

27 SO I WILL ALSO -- IN ARMSTRONG CLEARLY SETS OUT--
28 JUDGE BRECKENRIDGE (SIC) IN HIS DECISION SAID ARMSTRONG AND

1 HIS LAWYER WERE FREE TO TALK ABOUT SCIENTOLOGY. THEY TRIED
2 TO SHUT HIM UP BEFORE, AND HE SAID THEY'RE FREE TO TALK
3 ABOUT ANY OF ARMSTRONG'S EXPERIENCES, ANY OF THE DOCUMENTS
4 THAT WERE IN EVIDENCE, THEY -- THERE'S NO RESTRICTION.

5 SO WHY IN THE WORLD WOULD ARMSTRONG AT THAT POINT
6 IN HIS LIFE AFTER HAVING LITIGATED AGAINST SCIENTOLOGY FOR
7 FIVE YEARS AND THROUGH A THIRTY-DAY COURT TRIAL, COURT TRIAL
8 -- IT WASN'T A JURY TRIAL, WAS A COURT TRIAL -- WHERE THE
9 JUDGE SAYS YOU CAN SAY WHATEVER YOU WANT ABOUT YOUR FORMER
10 RELIGION, YOU CAN SAY WHATEVER YOU WANT TO, AND HE HAD A
11 CROSS-COMPLAINT THAT BY ALL INTENTS AND PURPOSES LOOKED LIKE
12 IT WAS A BELL RINGER, IT WAS SET TO GO TO TRIAL WITHIN THREE
13 MONTHS, AND HE GETS \$800,000 BUCKS. HE DIDN'T GET \$800,000
14 BUCKS JUST TO KEEP HIS MOUTH SHUT, GO AWAY INTO THE
15 FIRMAMENT AND SCIENTOLOGY CAN SAY YOU'RE A LIAR, YOU'RE A
16 PERJUROR, YOU'RE THIS AND YOU'RE THAT, AND IF YOU COME OUT
17 OF THE FIRMAMENT, WE'RE GOING TO HAMMER YOU AND GET AN
18 INJUNCTION AND PUT YOU IN JAIL IF YOU OPEN YOUR MOUTH AGAIN.

19 HE DIDN'T AGREE TO THAT, AND IT'S NOT REASONABLE
20 UNDER THE CIRCUMSTANCES TO CONCLUDE THAT HE HAD THAT INTENT
21 WHEN HE ENTERED INTO THE AGREEMENT, AND SCIENTOLOGY'S OWN
22 EVIDENCE, THEIR OWN EVIDENCE WHICH IS --

23 THE COURT: WELL, REALISTICALLY, MR. GREENE, FOR
24 THE ARMSTRONG POSITION, THEY SAY THERE'S A MUTUAL
25 CONFIDENTIALITY REQUIREMENT. HE POINTS TO HIS BELIEFS, THE
26 PURPORTED BELIEFS OF HIS ATTORNEY, AND WE HAVE THE STATEMENT
27 MADE BY AN ATTORNEY FOR ONE OF THE SCIENTOLOGY
28 ORGANIZATIONS.

1 MR. GREENE: THE PLAINTIFF HERE --

2 THE COURT: YES, BUT THE FACTS, THOSE FACTS ARE
3 NOT RELEVANT, AND WHEN ONE READS WITKIN, AND YOU CAN READ
4 IT, ONE WITKIN SUMMARY OF CALIFORNIA LAW, IT'S IN SECTION
5 84, PAGE 617, THE RULES OF INTERPRETATION OF WRITTEN
6 CONTRACTS ARE FOR THE PURPOSE OF ASCERTAINING THE MEANING OF
7 THE WORDS USED THEREIN. EVIDENCE CANNOT BE ADMITTED TO SHOW
8 INTENTION INDEPENDENT OF THE INSTRUMENT. THE WORDS ARE
9 CLEAR.

10 MR. GREENE: WELL, THE PROBLEM IS, JUDGE, WHEN
11 YOU LOOK AT --

12 THE COURT: SO WE HAVE -- THE FACT IS THAT
13 ARMSTRONG HASN'T RAISED A TRIABLE ISSUE AS TO WHETHER THE
14 PLAINTIFF BREACHED THE TERM OF THE SETTLEMENT AGREEMENT.
15 THE OTHER ARGUMENTS WITH REGARD TO OBSTRUCTION OF JUSTICE
16 AND HIS RIGHT TO FREE SPEECH UNDER THE FIRST AMENDMENT,
17 ET CETERA, WELL, THAT ITT CASE HAD DEALT WITH THAT.

18 MR. GREENE: NO, IT DIDN'T BECAUSE THE ITT
19 CASE --

20 THE COURT: IT'S POSSIBLE --

21 MR. GREENE: IT SAYS POSSIBLE, BUT FOR A WAIVER
22 TO BE EFFECTIVE --

23 THE COURT: IT'S POSSIBLE TO WAIVE EVEN FIRST
24 AMENDMENT FREE SPEECH --

25 MR. GREENE: FREE SPEECH RIGHTS.

26 THE COURT: -- BY CONTRACT.

27 MR. GREENE: CORRECT. IT SAYS THAT, BUT IT ALSO
28 SAYS THAT IN ORDER FOR THE WAIVER TO BE EFFECTIVE, IT'S

1 ESSENTIALLY THE SAME STANDARD AS WHEN YOU ENTERED A GUILTY
2 PLEA IN A CRIMINAL CASE. IT'S GOT TO BE KNOWING,
3 INTELLIGENT, AND VOLUNTARY, AND THERE'S ABSOLUTELY NO
4 EVIDENCE HERE THAT SUCH WAS A CASE, PARTICULARLY IN LIGHT OF
5 HELLER'S DECLARATION, SCIENTOLOGY'S OWN COUNSEL, SAYS BOTH
6 PARTIES WERE SUBJECT TO KEEPING THEIR MOUTH SHUT ABOUT THE
7 OTHERS.

8 MS. BARTILSON: EXCUSE ME, YOUR HONOR, BUT I
9 HAVE TO JUST DIFFER WITH MR. GREENE'S CHARACTERIZATION OF NO
10 EVIDENCE. THERE IS A VIDEOTAPE OF THE SIGNING OF THE
11 AGREEMENT SHOWING MR. ARMSTRONG SIGNING IT VOLUNTARILY.
12 MR. ARMSTRONG HAS PUT IN DECLARATION AFTER DECLARATION
13 SAYING HE DISCUSSED IT WITH MULTIPLE ATTORNEYS BEFORE HE
14 SIGNED IT. I DON'T THINK THAT THAT'S -- THERE'S EVEN ANY
15 QUESTION OF FACT AS TO WHETHER OR NOT HE ENTERED INTO IT
16 VOLUNTARILY WITH FULL KNOWINGNESS OF THE PROVISIONS.

17 THE COURT: THERE'S NO REASON TO CHANGE MY
18 TENTATIVE RULING.

19 MR. GREENE: WELL, BEFORE YOU TELL ME I CAN'T
20 TALK ANYMORE, I WANT TO KEEP --

21 THE COURT: WELL, THAT'S WHAT I'M SAYING.

22 MR. GREENE: I WANT TO GIVE YOU ANOTHER CASE,
23 JUDGE, WITH RESPECT TO THEIR OBJECTIONS TO HEARSAY AND YOUR
24 CHARACTERIZATION --

25 THE COURT: NO.

26 MR. GREENE: THE EXCEPTION --

27 THE COURT: NO.

28 MR. GREENE: -- IS 1241(A) CONTEMPORANEOUS

1 STATEMENT BY --

2 THE COURT: WE'LL GO ON TO BLACK POINT FOREST
3 PROJECT --

4 MR. GREENE: JUDGE, ALSO --

5 THE COURT: EXCUSE ME, MR. GREENE.

6 MR. GREENE: JUDGE --

7 THE COURT: YOUR MATTER'S OVER.

8 MR. GREENE -- WITH RESPECT TO --

9 THE COURT: I'VE GIVEN YOU MORE THAN TWENTY
10 MINUTES. THIS IS A LAW AND MOTION MATTER. TIME IS UP.

11 MR. GREENE: I UNDERSTAND, JUDGE, BUT THE WAY
12 THAT THIS PRELIMINARY INJUNCTION IS BROADER THAN THE
13 LANGUAGE OF THE CONTRACT ITSELF. IT'S BROADER THAN THE
14 LANGUAGE OF THE CONTRACT ITSELF.

15 THE COURT: BLACK POINT FOREST VERSUS THE CITY OF
16 NOVATO.

17 MR. GREENE: AND ALSO IT'S -- AND IT'S WAY
18 BROADER, AND IN ADDITION, IT TAKES MY FILE IN THIS CASE AND
19 YOUR ORDER IS ALSO WRONG BECAUSE YOU'VE STRICKEN --

20 THE COURT: I'LL HAVE YOU TAKEN AWAY, MR. GREENE.

21 MR. GREENE: -- YOU'VE STRICKEN HIS EVIDENCE AND
22 YOU'VE DENIED HIS ABILITY --

23 THE COURT: EXCUSE ME, MR. GREENE.

24 MR. GREENE: -- TO EVEN APPEAL THIS --

25 THE COURT: YOU'RE INTERFERING WITH ANOTHER CASE.

26 MR. GREENE: -- GIVEN --

27 THE COURT: EXCUSE ME, MR. GREENE.

28 MR. GREENE: THE BREADTH OF YOUR ORDER AND THE

1 EFFECT OF IT, JUDGE, IS THAT YOU'VE MADE IT IMPOSSIBLE FOR
2 ARMSTRONG TO EFFECTIVELY APPEAL. THE INCORRECT DECISION
3 THAT YOU'RE RENDERING NOW, BECAUSE YOU SAY THAT HIS EVIDENCE
4 IS IRRELEVANT AND HAS TO BE STRICKEN --

5 THE COURT: EXCUSE ME. EXCUSE ME.

6 (WHEREUPON, PROCEEDINGS WERE CONCLUDED)

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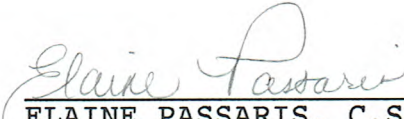
REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
)
COUNTY OF MARIN)

I, ELAINE PASSARIS, DO HEREBY CERTIFY THAT I AM A
DULY CERTIFIED SHORTHAND REPORTER OF THE STATE OF
CALIFORNIA, AND THAT AS SUCH REPORTER I ATTENDED THE
HEARING OF THE FOREGOING CAUSE AND TOOK IN STENOGRAPHY THE
PROCEEDINGS HAD IN THE ABOVE-ENTITLED MATTER.

THAT I THEREAFTER CAUSED THE FOREGOING PROCEEDINGS
OF SAID ACTION TO BE TRANSCRIBED BY COMPUTER UNDER MY
DIRECTION, AND THAT THE FOREGOING PAGES CONSTITUTE A TRUE
AND CORRECT TRANSCRIPT OF SAID STENOGRAPHY SO TAKEN.

DATED: October 30, 1995



ELAINE PASSARIS, C.S.R.
CERTIFICATE NO. 2948